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Appl. No. 10/612,254  
Response Dated February 14, 2007  
Reply to Office Action of November 14, 2006

**• • R E M A R K S / A R G U M E N T S • •**

The Office Action of November 14, 2006 has been thoroughly studied. Accordingly, the following remarks are believed to be sufficient to place the application into condition for allowance.

Claims 1, 3-9, and 11-22 are pending in this application.

Claims 1, 3-9 and 11-22 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,760,965 to Chandler.

With respect to claims 1, 9, 18-20 and 22, the Examiner has relied upon Chandler as disclosing:

...a support 23 having an axis and capable of supporting a spare tire, and further discloses an upper planar guide plate 53 attached to an upper tubular member 27F, lower planar guide plate 59 attached to a lower tubular assembly (61 in FIG. 7) wherein an upper plate is coupled to a lower plate for relative rotational movement for rotating an arm 23 about a common axis and a support arm central axis (see FIGS 16-17).

With respect to claims 3-5 and 11-13 the Examiner has relied upon Chandler as disclosing:

...upper and lower tubular members each having a central axis and are attached at an angle that is non-perpendicular (FIG. 7, angle  $\alpha$ ) and are collinear and hollow.

With respect to claims 6, 7, 14 and 15 the Examiner has relied upon Chandler as disclosing  
“an axially central element 65 having threads.”

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With respect to claims 8 and 16 the Examiner has relied upon Chandler as disclosing "a latch mechanism 41."

With respect to claim 17 the Examiner has relied upon Chandler as disclosing "an arm 23 that includes structure that engages a latch mechanism 41."

With respect to claim 21 the Examiner has relied upon Chandler as disclosing "a tire mounting bracket 79."

The Examiner has taken the position that:

With respect to tubular members, we need only a structure that defines a tube. Chandler's tubes 27 & 61, 63 are clearly tubes as they define walls with a hollow middle. Applicant argues that Chandler's plates 61 & 63 are not tubes but plates, but Chandler's plates 61, 63 along with the underside of arm 23 define a body having walls and a hollow middle.

As defined in Webster's Dictionary (See [www.webster.com](http://www.webster.com)), "tubular" means:

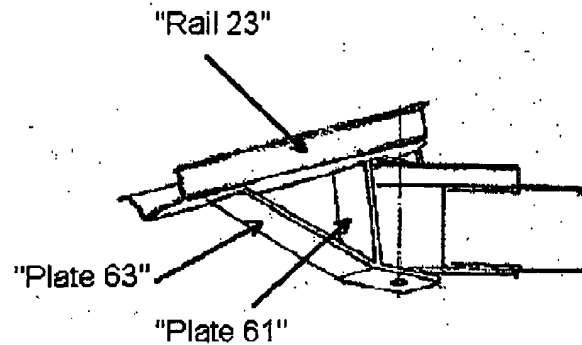
*having the form of or consisting of a tube.*

As further defined in Webster's Dictionary (See [www.webster.com](http://www.webster.com)), "tube" means:

1 : any of various usually cylindrical structures or devices: as a : a hollow elongated cylinder; especially : one to convey fluids b : a soft tubular container whose contents (as toothpaste) can be removed by squeezing c (1) : TUNNEL (2) British : SUBWAY b d : the basically cylindrical section between the mouthpiece and bell that is the fundamental part of a wind instrument

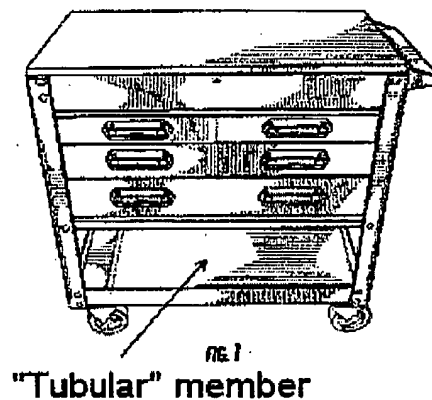
The Examiner has taken the position that the following structure of Chandler can be construed as a "tubular" member:

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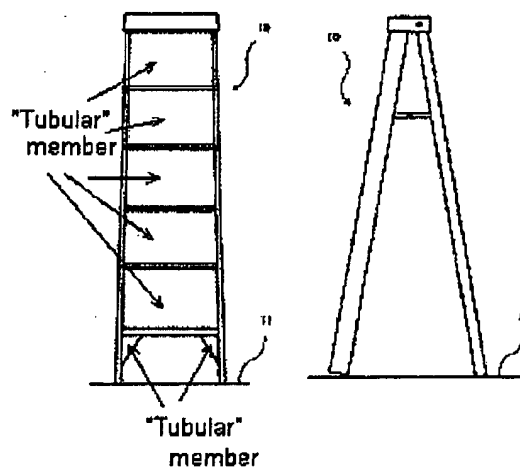
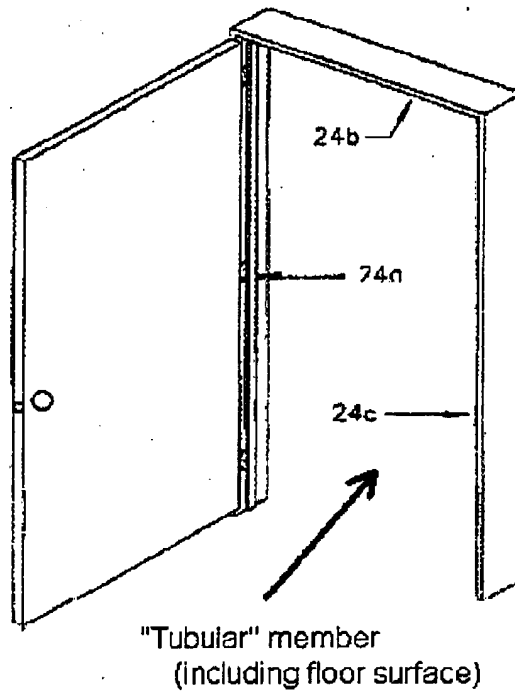


The Examiner's definition of "tubular" appears to be "a body having walls and a hollow middle" as stated by the Examiner on page 4 of the Office Action.

If the Examiner's definition were followed, it is submitted that the following would all be "tubular" members:



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Note: of the above the lower "tubular" members of the ladder that are defined in part by the angled bracket are most similar to structure of Chandler which the Examiner has relied upon.

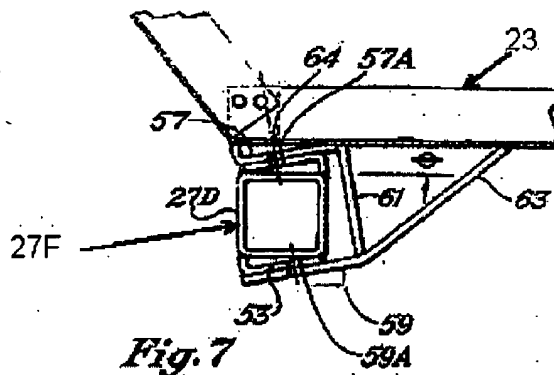
It is submitted that those skilled in the art would not consider any of the above structures as "tubular" members.

Moreover, those skilled in the art would not consider the plates 61 and 63 of Chandler as forming a "tubular" member.

On page 3 of the Office Action the Examiner states:

Chandler's upper tubular member 27F is at least above upper guide plate 53, upper guide plate 53 is at least above lower guide plate 59 and lower tubular member (indicated generally as 61) and lower guide plate are at least below arm 23.

Fig. 7 of Chandler best shows the arrangement the Examiner is referring to:



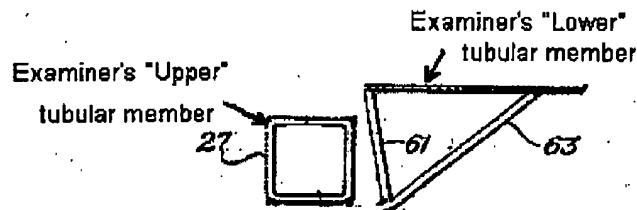
While the Examiner has noted that:

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- 1) Tubular member 27F is at least above upper guide plate 53;
- 2) Upper guide plate 53 is at least above lower guide plate 59; and
- 3) Lower tubular member (indicated generally as 61) and lower guide plate are at least below arm 23,

it is noted that the Examiner has argued that the lower "tubular" member is defined by plates 61 and 63 and "the underside of arm 23."

Isolating the upper tubular member from the lower tubular member in Fig. 7 results in the following:



*Fig. 7*

As can be seen, if anything the Examiner's "lower" tubular member extends above the Examiner's "upper" tubular member.

Certainly one skilled in the art would not conclude from Chandler's Fig. 7 (or any other figure) that the elements the Examiner has identified are readable on applicant's claimed "upper" and "lower" tubular members.

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The only way to come up with such an interpretation is to rely upon applicant's own disclosure and even in such a case the interpretation is found to be completely unsupported.

It is noted that, in addition to being "upper" and "lower" applicant's tubular members are required to be collinear.

If one considers Fig. 7, it is noted that the Examiner's "upper" and "lower" tubular members cannot be construed to be both "upper" and "lower" and collinear.

The Examiner has made the statement:

Finally, with respect to claims 1 & 9 it is noted that the tubular structure provides no benefit beyond that of connecting guide plates to the arm. The guide plates rotate relative to each other to provide motion to arm 23. Thus, a channel or solid rod could connect said plates to arm as effectively.

This statement is not fully understood. Is the Examiner suggesting that it would be obvious to modify Chandler so that instead of using "tubular" structures, use "a channel or solid rod" to connect the guide plates to the arm? If however, the lower tubular member is defined by the lower surface of the arm, how can it be replaced with another structure and connected to itself?

The Examiner is requested to reconsider the outstanding rejection and the comments above.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot maintain reliance upon the prior art as required under 35 U.S.C. §102 as anticipating applicant's claimed invention.

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It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejections of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicant's patent counsel at the telephone number given below to discuss such issues.

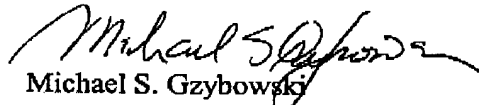
To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of



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time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,

  
Michael S. Gzybowski  
Reg. No. 32,816

BUTZEL LONG  
350 South Main Street  
Suite 300  
Ann Arbor, Michigan 48104  
(734) 995-3110

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